

JIM IRVIN
COMMISSIONER-CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER



ARIZONA CORPORATION COMMISSION



0000104603

DIRECTOR

SECURITIES DIVISION
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Phoenix, AZ 85007-2896
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MEMORANDUM

TO: Commissioner-Chairman Jim Irvin
Commissioner Renz D. Jennings
Commissioner Carl J. Kunasek

FROM: Michael G. Burton, Sr. *MB*
Director of Securities

DATE: October 15, 1998

RE: Trendwatch, Ronald Harry Lerner and Michael Diamond (S-03250A-98-0000)

CC: Jack Rose, Executive Secretary

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AZ CORP COMMISSION

Attached is a proposed Final Order and Consent to Same regarding Trendwatch, Ronald Harry Lerner and Michael Diamond (collectively "Respondents"). The Order requires Respondents to cease and desist from their activity, imposes monetary restitution of \$341,902.50, of which \$15,000 shall be paid upon entry of the Order, and orders Respondents to pay a penalty of \$15,000.

The Order finds that Respondents acted as investment advisers or investment adviser representatives within Arizona although not licensed or exempt from the Arizona Investment Management Act. Respondents had published a financial newsletter and provided investment advice to their customers. The Order also finds that Respondents misrepresented their professional qualifications with the intent to cause their clients to purchase their newsletter.

Respondents consent to the terms of the Order without admitting or denying the Findings of Fact or Conclusions of Law.

Under the Order, Respondents agree to pay full restitution to all their clients from 1994 forward and make an initial payment of \$15,000, to be deposited in an interest bearing account through the Office of Attorney General. Due to Respondents' present financial condition, it was not possible to structure a payment plan for the remaining amount; however the Division is entitled to utilize all methods of collection in order to recoup the remaining restitution amount.

The Division believes that the entry of this Order serves the public interest and is appropriate for the protection of investors. In addition, the Division believes that entering this Order will have a deterrent effect on other unlicensed investment advisers.

Originator: Mark Dinell

FILED - 1900 - 1900 - 1900

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
Commissioner-Chairman
3 RENZ D. JENNINGS
Commissioner
4 CARL J. KUNASEK
Commissioner
5

6 In the matter of)

7 TRENDWATCH, Inc.
8 811 E. Prince Road, #205
Tucson, AZ 85719,)

9 RONALD HARRY LERNER
10 811 E. Prince Road, #205
Tucson, AZ 85719,)

11 MICHAEL DIAMOND
12 811 E. Prince Road, #205
Tucson, AZ 85719,)

13 Respondents.)

) DOCKET NO. S-03250-A-98-0000

) DECISION NO. _____

) **FINAL ORDER AND CONSENT TO SAME**

14 I.

15 INTRODUCTION

16 TRENDWATCH, RONALD HARRY LERNER ("LERNER") and MICHAEL DIAMOND
17 ("DIAMOND") elect to permanently waive their right to a hearing and appeal under Articles 11 and 12 of
18 the Securities Act of Arizona (the "Act") with respect to this Order to Cease and Desist ("Order"); admit
19 the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the
20 Findings of Fact and Conclusions of Law contained in this Order; and consent to entry of this Order by the
21 Commission.

22 II.

23 FINDINGS OF FACT

24
25 1. TRENDWATCH is a sole proprietorship that for an annual fee provides
26 subscribers with advice on the purchase or sale of specific securities, namely options. TRENDWATCH

1 has only one office, located at 811 E. Prince Road, #205, Tucson, Arizona, 85719. TRENDWATCH is
2 not licensed as an investment advisor.

3 2. LERNER whose last known address is at 811 E. Prince Road, #205, Tucson,
4 Arizona, 85719 is the Chief Technical Analyst and sole proprietor of TRENDWATCH. LERNER has
5 never been licensed as an investment advisor nor as an investment advisor representative under the
6 Investment Management Act of Arizona.

7 3. DIAMOND whose last known address is at 811 E. Prince Road, #205, Tucson,
8 Arizona, 85719 is in charge of sales for TRENDWATCH. DIAMOND has never been licensed as an
9 investment advisor nor investment advisor representative under the Investment Management Act of
10 Arizona.

11 4. LERNER, DIAMOND and TRENDWATCH may be collectively referred to as
12 RESPONDENTS.
13

14 5. From at least September 4, 1994 until the present, RESPONDENTS have
15 advertised TRENDWATCH as "Option Trading Specialists" using several different national and
16 international mediums including magazines, newspapers and flyers. A toll free 1-800 number is listed
17 on their advertisements, which, when called, rings through to the Trendwatch office located in Tucson.

18 6. RESPONDENTS advertising and sales literature include "Weekly Fax Updates"
19 and "Special Fax Update Special Red Alert Bulletins."
20

21 7. The Weekly Fax Updates include sections detailing "MARKET OVERVIEW"
22 and "COMMODITIES." The weekly fax has a section entitled "HOT PROSPECTS" that lists the
23 specific securities recommended by RESPONDENTS, the price of the securities and the number rating
24 that RESPONDENTS have assigned those securities. There is a section captioned "HOLD" listing
25 previously recommended calls and there is a section captioned "INSTRUCTIONS" wherein
26

1 TRENDWATCH instructs its clients, "we recommend investing up to 20% of your option portfolio in a
2 selection of the hot prospects. The remaining 80% is for red-alert bulletins."

3 8. The Special Fax Update Red Alert Bulletins are sent to subscribers on special
4 occasions and are timed to specific market activity. Red Alert Bulletins tell the subscribers which
5 specific security to buy or sell and why.

6 9. Although the advertising materials list the price for a one year subscription as
7 \$1,500, the actual price is negotiable. Some subscribers pay as little as \$150 and some subscribers pay
8 as much as \$2,750.

9 10. The subscribers who pay \$2750 are called "Executive Service Clients." In
10 addition to the enumerated services listed above, these Executive clients receive additional attention in
11 the form of personal phone calls from both LERNER and DIAMOND detailing special situations
12 regarding buying and selling specific equity or futures contracts. Alternatively, these clients can also
13 call RESPONDENTS and receive advice on specific securities as to whether they should buy or sell.
14

15 11. In his telephone calls with prospective clients DIAMOND has represented that
16 trading in options by following the TRENDWATCH advice is "really quite that simple... following our
17 advice you will make money."

18 12. DIAMOND has represented TRENDWATCH as having ten technicians based in
19 multiple states including Arizona, Missouri, New York, and California.
20

21 13. On at least one occasion when DIAMOND was speaking with a client who
22 requested a refund, DIAMOND had the client speak with Steven Wellis ("Wellis"). The client spoke
23 with Wellis who asked if the client wanted to make money and told the client he could easily make
24 \$5000. Wellis emphasized the fact that he obtained a Doctorate in Mathematics, which according to the
25 client further sold the client on the idea of using TRENDWATCH. In fact, Wellis is a "phone name"
26 used by DIAMOND in order to sound more impressive and encourage sales.

1 14. Since September 1, 1994, RESPONDENTS have had approximately 115 clients,
2 charging them approximately \$347,500 for the TRENDWATCH service. Of that amount,
3 TRENDWATCH has refunded \$5597.50 to its clients.

III.

CONCLUSIONS OF LAW

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6 15. The Commission has jurisdiction over matters relating to securities pursuant to
7 Article XV of the Arizona Constitution and the Investment Management Act of Arizona, A.R.S. § 44-
8 3101 et seq.

9
10 16. For the time period beginning September 1, 1994, through the present,
11 RESPONDENTS, acted as investment advisers or investment adviser representatives within Arizona,
12 although not licensed nor exempt pursuant to the provisions of Article 4 of the Arizona Investment
13 Management Act.

14 17. In connection with the provision of investment advisory services,
15 RESPONDENTS, directly or indirectly, made untrue statements of material fact and omitted to state
16 material facts which were necessary in order to make the statements made not misleading in light of the
17 circumstances under which they were made; RESPONDENTS engaged in transactions, practices or
18 courses of business which operated or would operate as a fraud or deceit including, but not limited to the
19 following:

20 a) referring to past specific recommendations of TRENDWATCH which were profitable
21 without listing all past recommendations during the time period whether profitable or
22 not;

23 b) directly or indirectly representing that a graph, chart or formula can in and of itself be
24 used to determine which securities to buy or sell or when to buy or sell without
25
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1 prominently disclosing in such advertisements the limitations and the difficulties with
2 respect to their use; and

3 c) omitting to tell investors that RESPONDENTS were not licensed as investment
4 advisors or investment advisor representatives.

5 1. In connection with the provision of investment advisory services, Respondent
6 DIAMOND misrepresented professional qualifications with the intent that the client rely upon the
7 misrepresentations within the meaning of A.R.S. § 44-3241 and A.A.C. R 14-6-208 including but not
8 limited to the following:

9 a. misrepresenting the number of TRENDWATCH employees, the identity and
10 qualifications of TRENDWATCH personnel; and

11 b. misrepresenting Wellis to be a person other than an alias used by DIAMOND and
12 that Wellis has a doctorate degree in mathematics.
13

14 IV.
15 ORDER

16 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission
17 finds that the following Order is appropriate, in the public interest and necessary for the protection of
18 investors.

19 IT IS ORDERED, pursuant to A.R.S. § 44-3292, RESPONDENTS shall Cease and Desist from
20 the conduct alleged herein.

21 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS jointly and
22 severally shall make monetary restitution in the amount of \$341,902.50 as set forth in the records obtained
23 by the Securities Division. \$15,000, by certified check, shall be paid upon entry of this Order. These
24 funds are to be deposited, through the Office of Attorney General, into an interest-bearing account for the
25 benefit of subscribers, for the subsequent distribution to the subscribers as reflected on the books and
26 records of the Securities Division.

RESPONDENTS shall pay interest on all unpaid amounts of restitution accruing from the date of

1 entry of the Order, at the statutory rate of ten percent per annum pursuant to A.A.C. R14-4-308, until the
2 amounts are paid in full.

3 Restitution funds shall be paid to the Arizona Attorney General and shall be deposited in a trust
4 account with a federally insured financial institution. The Arizona Attorney General shall disburse the
5 available funds on a pro rata basis to investors as reflected in the records of the Division. If any
6 disbursement check issued by the Arizona Attorney General either is not deliverable or has not cleared the
7 trust account within 120 days of the date of issuance, the funds related to such check shall be redistributed
8 to the known investors. If all investors are paid in full including interest, any returned funds shall revert to
9 the State of Arizona payable to the Treasurer.

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IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, RESPONDENTS shall pay jointly and severally pay an administrative penalty in the amount of \$15,000, by certified check payable to the Treasurer of the State of Arizona for deposit into its general fund, due and payable after all restitution payments required by this Order have been made.

IT IS FURTHER ORDERED that this Order shall become effective immediately upon the date set forth below.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

COMMISSIONER-CHAIRMAN	COMMISSIONER	COMMISSIONER
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IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 1998.

JACK ROSE
Executive Secretary

DISSENT

(MJN)

ORIGINAL AND TEN COPIES the foregoing
filed this ___ day of September, 1998, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Copy of the foregoing mailed
this ___ day of September, 1998, to:

Trendwatch
Ronald Harry Lerner
Michael Diamond
811 E. Prince Road, #205
Tucson, AZ 85719
Respondents

**1 CONSENT TO ENTRY OF ORDER BY THE CORPORATION COMMISSION
2 AND WAIVER OF HEARING**

3 Respondent, TRENDWATCH, acknowledges that it has been fully advised of its right to a
4 hearing to present evidence and call witnesses. TRENDWATCH waives all hearing procedures and rights
5 to appeal provided by the Securities Act of Arizona (the "Act") with respect to the accompanying Order to
6 Cease and Desist and Consent to Same (the "Order").

7 TRENDWATCH admits the jurisdiction of the Arizona Corporation Commission ("Commission")
8 with respect to matters set forth in the Order and this Consent to Entry of Order ("Consent").

9 TRENDWATCH neither admits nor denies the Findings of Fact and Conclusions of Law
10 contained in the Order and consents to entry of the Order.

11 TRENDWATCH understands that this Consent does not preclude the Arizona Corporation
12 Commission or any other agency or officer of the State of Arizona or its subdivisions from initiating other
13 administrative, civil or criminal proceedings against it, now or in the future, that may be related to the
14 matter addressed by the Order and this Consent. TRENDWATCH further understands that if another
15 agency or officer of this or another state or the federal government or any foreign jurisdiction requests
16 investigative or other information from the Commission relating to this matter, the Commission shall
17 cooperate fully with such requests.

18 RONALD HARRY LERNER represents that he is the sole proprietor of TRENDWATCH and
19 that, as such, he is authorized to sign this Consent for and on behalf of TRENDWATCH.

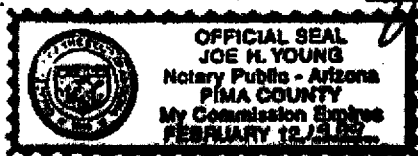
20 TRENDWATCH

21 Ronald Harry Lerner
22 BY: RONALD HARRY LERNER
23 Sole Proprietor, TRENDWATCH

24 SUBSCRIBED AND SWORN TO before me this 8 day of OCTOBER, 1998.

25 My Commission Expires:

26 2/12/99



27 Joe H. Young
28 NOTARY PUBLIC

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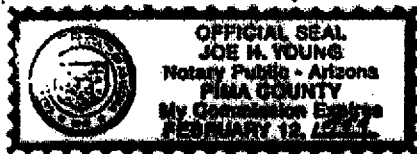
RONALD HARRY LERNER admits the jurisdiction of the Arizona Corporation Commission ("Commission") with respect to matters set forth in the Order and this Consent to Entry of Order ("Consent").

RONALD HARRY LERNER understands that this Consent does not preclude the Arizona Corporation Commission or any other agency or officer of the State of Arizona or its subdivisions from initiating other administrative, civil or criminal proceedings against him, now or in the future, that may be related to the matter addressed by the Order and this Consent. RONALD HARRY LERNER further understands that if another agency or officer of this or another state or the federal government or any foreign jurisdiction requests investigative or other information from the Commission relating to this matter, the Commission shall cooperate fully with such requests.

SUBSCRIBED AND SWORN TO before me this 8 day of OCTOBER, 1998.

Joe H. Young
NOTARY PUBLIC

2/12/99



**CONSENT TO ENTRY OF ORDER BY THE CORPORATION COMMISSION
AND WAIVER OF HEARING**

Respondent, MICHAEL DIAMOND, acknowledges that he has been fully advised of his right to a hearing to present evidence and call witnesses. MICHAEL DIAMOND waives all hearing procedures and rights to appeal provided by the Securities Act of Arizona (the "Act") with respect to the accompanying Order to Cease and Desist and Consent to Same (the "Order").

MICHAEL DIAMOND admits the jurisdiction of the Arizona Corporation Commission ("Commission") with respect to matters set forth in the Order and this Consent to Entry of Order ("Consent").

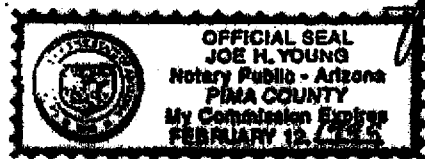
MICHAEL DIAMOND neither admits nor denies the Findings of Fact and Conclusions of Law contained in the Order and consents to entry of the Order.

MICHAEL DIAMOND understands that this Consent does not preclude the Arizona Corporation Commission or any other agency or officer of the State of Arizona or its subdivisions from initiating other administrative, civil or criminal proceedings against him, now or in the future, that may be related to the matter addressed by the Order and this Consent. MICHAEL DIAMOND further understands that if another agency or officer of this or another state or the federal government or any foreign jurisdiction requests investigative or other information from the Commission relating to this matter, the Commission shall cooperate fully with such requests.

Michael Diamond
MICHAEL DIAMOND

SUBSCRIBED AND SWORN TO before me this 9th day of October, 1998.

Joe H. Young
NOTARY PUBLIC



My Commission Expires:

2/12/99